VENTURA
SUPERIOR COURT
FILED
JUN 19 2019
MICHAEL D. PLANET
Executive Officer and Clerk
BY: _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

VENTURA COUNTY DEPUTY SHERIFFS' ASSOCIATION, Petitioner/Plaintiff, vs. COUNTY OF VENTURA; BILL AYUB, Sheriff; and DOES 1 through 20, inclusive, Respondents/Defendants, TODD D. HOWETH, in his capacity as Public Defender of Ventura County, Intervenor.	Case No.: 56-2019-00523492-CU-WM-VTA RULING ON PETITION FOR WRIT OF MANDATE AND MOTION TO DISSOLVE PRELIMINARY INJUNCTION

The court has previously taken under submission the Petition for a Writ of Mandate and complaint for Declaratory Relief and Injunction as filed by the Ventura County Deputy Sheriff's Association. On January 23, 2019, the court issued a Temporary Restraining Order in favor of all peace officers. On February 11, 2019 the court issued a preliminary injunction ordering that personnel records relating to incidents or conduct which occurred before January 1, 2019 not be disclosed. The Office of the Ventura County Public Defender was allowed to intervene in the

action, and filed a motion to dissolve the injunction based on the trial court ruling in *Walnut Creek Police Officers Association v. City of Walnut Creek*. That motion was taken under submission on April 30, 2019. The court now rules on that motion, which will have the effect of resolving all issues raised in this action.

This court issued its preliminary injunction based on the landscape as it existed in January and February of 2019. At that time, there was widespread concern that the changes in the limitations on access to peace officer records created by SB 1421 could lead to inconsistent rulings from trial courts considering that there are 58 counties in California. Rather than contribute to the potential for confusion, this court elected to defer its ruling in anticipation of an appellate court analysis. There has been no such direction from either the California Supreme Court, or any of the appellate districts. As such, the court rules on the issues submitted to it for decision.

The focus of the contentions by the parties to this action is Senate Bill 1421, enacted by the Legislature, and signed into law by Governor Brown, which constitutes a major amendment to Penal Code section 832.7, and which was effective on January 1, 2019.

Penal Code section 832.7, both before and after its amendment by SB 1421, establishes a detailed procedure to obtain personnel records of peace officers and custodial officers. Before SB 1421, that detailed procedure was known as a *Pitchess* motion (as a result of the decision in *Pitchess v. Superior Court,* 11 Cal.3d 531), which is quite restrictive as to what material may be sought, who may seek to obtain it, the basis for obtaining it, and the procedures for obtaining it. The *Pitchess* procedure was also the only means of obtaining the records in question. More specifically, these records were not subject to being obtained through a request based on the Public Records Act (Government Code section 6250, et. seq.) The result was that California was one of the most restrictive states in the country when it came to the protection of law enforcement personnel records from public disclosure.

All of this changed to a significant degree when the Legislature enacted SB 1421. SB 1421 added a new subdivision, subdivision (b), to Penal Code section 832.7. This addition allowed public inspection of personnel records of public safety officers relating to an incident

involving a discharge of a firearm at a person by a police or custodial officer, and an incident in which the use of force by a police or custodial officer had resulted in death, or great bodily injury. Also added to the category of records available for public inspection were records relating to sexual assault and officer dishonesty. SB 1421 also did not require use of the *Pitchess* procedure to obtain these records. SB 1421 also defined "sexual assault" and "member of the public" and stated the scope of what was a "record." There were other sections as well, but the main thrust was to allow public access to certain categories of records, and without the *Pitchess* procedures and limitations.

As stated previously, the court's focus on the issue presented to it is that of the retroactivity of SB 1421. The court is not going to discuss or make findings regarding the wisdom of the Legislature in enacting SB 1421. The enactment of SB 1421 is well within the scope of the authority of the Legislature. Courts, especially trial courts, are not super legislatures whose function is to second guess elected representatives.

The issue is one of statutory construction. The court in *MacIsaac v. Waste Management*, 134 Cal.App.4th 1076 provides a good summary of the general framework for statutory construction. The first step is the language of the statute itself. The second step is the canons of construction and extrinsic aids to interpretation. The third step is "Reason, Practicality and Common Sense."

Proceeding through these, there is nothing in the plain language of the statute which addresses retroactivity one way or the other.

Next, there is the general law on retroactivity. Section 3 of the Penal Code specifically states that no part of the code is retroactive unless expressly so stated. The State Supreme Court looked at the question of retroactivity in great detail in *Quarry v. Doe 1*, (2012) 53 Cal.4th 945 @ 955. In part:

> "Our decisions have recognized that statutes are ordinarily interpreted as operating prospectively in the absence of a clear indication of a contrary legislative intent. In construing statutes, there is a presumption against retroactive application unless the Legislature plainly has directed otherwise by means of "'express language of retroactivity or... other sources [that] provide a clear and unavoidable implication that the Legislature intended retroactive application'".

> Ambiguous statutory language will not suffice to dispel the presumption against retroactivity; rather " ' a statute that is ambiguous with respect to restorative application is construed...to be...unambiguously prospective." [Internal citations omitted.]

Here, the statute does not contain any language indicating that it is to be applied retroactively. The comments of the sponsor of this legislation made outside of the Legislature that she intended the legislation to be retroactive is not controlling, or even relevant. There is no preamble to the statute, and there is no introductory language that is helpful for statutory analysis. County argues that the Legislative history reflects opposition to the bill on the issue of retroactivity. Such opposition, however, does not indicate how the Legislature viewed the statute in the form in which it was enacted, or what its intent was.

The last prong of *MacIsaac* is largely irrelevant at this point. There is clearly public interest in peace officer records, especially as they may relate to misconduct on the job. That interest, however, is not the controlling factor. If that public interest is so pervasive, it needs to be converted into legislative action. Using it to put a strained construction on existing legislation, or to reach a result is not appropriate for this court as a matter of judicial practice.

The existing injunction is dissolved. It is the finding of the court that the statute in question is to be applied prospectively only from January 1, 2019. It is not to be applied retroactively to conduct or records relating to conduct occurring before January 1, 2019.

Petitioners are determined to be the prevailing party, and are entitled to their statutory costs of suit. Counsel for plaintiff is directed to prepare and to submit a form of Judgment.

Dated: June 18, 2019

HENRY J. WALSH
Judge of the Superior Court

PROOF OF SERVICE

CCP § 1012, 1013a (1), (3) & (4)

STATE OF CALIFORNIA)
) ss.
COUNTY OF VENTURA)

Case Number: 56-2019-00523492-CU-WM-VTA

Case Title: Ventura County Deputy Sheriffs' Association vs. County of Ventura, et al.

I am employed in the County of Ventura, State of California. I am over the age of 18 years and not a party to the above-entitled action. My business address is 800 S. Victoria Avenue, Ventura, CA 93009. On the date set forth below, I served the within:

RULING ON PETITION FOR WRIT OF MANDATE AND MOTION TO DISSOLVE PRELIMINARY INJUNCTION

On the following named party(ies)

SEE ATTACHED SERVICE LIST

____**BY PERSONAL SERVICE**: I caused a copy of said document(s) to be hand delivered to the interested party at the location set forth above on _____ at ____ a.m./p.m.

__x___ **BY MAIL**: I caused such envelope to be deposited in the mail at Ventura, California. I am readily familiar with the court's practice for collection and processing of mail. It is deposited with the U.S. Postal Service on the dated listed below.

and____**BY FACSIMILE**: I caused said documents to be sent via facsimile to the interested party at the facsimile number set forth above at _____ with no notice of error from telephone number _____.

I declare under penalty of perjury that the foregoing is true and correct and that this document is executed on **June 19, 2019** at Ventura, California.

By: _____
Hellmi McIntyre, Judicial Secretary

Leroy Smith and Emily Gardner
800 South Victoria Avenue, L/C 1830
Ventura, California 93009

Richard Levine And Brian Ross
1428 2nd Street, Suite 200
Santa Monica, California 90401

Michael McMahon and Todd Howeth
Office of the Public Defender
800 South Victoria Avenue
Ventura, California 93009

Thomas Burke
505 Montgomery Street, Suite 800
San Francisco, California 94111

David Snyder
534 Fourth Street, Suite B
San Rafael, California 94901